CA 13601 4-

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 466 /2004 Single Bench

APPELLANT / DEFENDANT — M/s. Sanpariya & Sons, Through Bhagidar Jawaharlal Sanpariya, S/o. Late Phool Chand Sanpariya, Aged about 50 years, R/o. Ambikapur, P.S. & Tahsil Ambikapur (C.G.)

P.R. No. 3043 dt. 14.9.04 Presented by Shri Manoj Mishra Advocate

VERSUS

RESPONDENT / PLAINTIFF — Kailash Kumar Budhiya, S/o. Late Rameshwar Prasad Budhiya, Aged about 34 years, Occupation Business, R/o. Sadar Road, P.S. & Tahsil Ambikapur, District Surguja (C.G.)

14/9/04

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE

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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 466/2004

Appellant : M/s Sanpariya & Sons

Versus

Respondent : Kailash Kumar Budhiya

Shri P.K.C.Tiwari learned Sr. Counsel with Shri M.P.S. Bhatia for the appellant.

Shri Sunil Otwani learned counsel for respondent/Caveator.

JUDGMENT

(Passed on 22-2-2005)

The instant second appeal has been filed by the appellant/defendant against the judgment and decree dated 28.8.2004 passed by 5th Additional District Judge (FTC) Ambikapur in Civil Appeal No. 11-1/2004 by which the judgment and decree dated 7.10.2002 passed by Additional Civil Judge Class I Ambikapur in Civil Suit No. 51-A/2001 has been confirmed and the order of ejectment was passed in favour of the respondent/plaintiff on the ground of bona fide need of opening of departmental stores. (Hereinafter the parties shall be addressed as per the description in the trial Court).

It is not in dispute that the defendant was the tenant in the suit accommodation of plaintiff on monthly rent of Rs. 750/- and an agreement to this effect was executed between them on 24/04/87.

Case of the plaintiff before the trial Court was that there was a partition of the property between the members of R.P.Budhiya and family on 01/05/88 and thereafter as per the family arrangement the suit shop was given in the share of the plaintiff and defendant started paying rent to the plaintiff. Suit was filed by the plaintiff on the ground that he underwent bypass surgery after suffering heart attack and therefore he needed the suit for opening a departmental store and for that the suit accommodation had to be repaired which was not possible without being vacated. It is further pleaded that the defendant No.1 opened a shop styled as Fair Deal shop and started his business there and as such the defendant had alternative shop in his possession where as the plaintiff required the same for bona fide need as he had no other suitable shop in Ambikapur town. The tenancy was terminated by legal notice and even then the defendant did not vacate the same and as such he was entitled to obtain vacant possession of the suit accommodation along with the damages.

The defendant denied the plaint allegations and stated that the plaintiff has number of shops in Ambikapur town. He also denied that he ever opened a new Fair Deal shop as the said shop belonged to his younger brother, Purushottam. It was also denied that after partition, the suit shop came into the possession of the plaintiff. It was stated that the other partners of the firm were also necessary party. It was further pleaded that the plaintiff is an advocate and he filed the suit on false grounds.

On the pleadings of the respective parties, the issues were framed and the suit was decreed by the trial Court after recording a finding that the plaintiff required the suit shop for his bona fide need for opening a departmental store as except the suit shop he had no other alternative suitable accommodation in Ambikapur town. The trail Court decreed the suit recording a finding that the defendant had another shop in Ambikapur town for his business.

The defendant preferred an appeal before the First Appellate Court which was dismissed and the finding of the trial Court that the defendant had an alternative shop in Ambikapur town for his business, was set aside. However, the suit has been decreed on the ground that the suit accommodation was required by the plaintiff for his bona fide need of opening a departmental store as he had no other alternative shop in

Ambikapur town. Learned Courts below have also held that there was no other alternative suitable accommodation available to the plaintiff in Ambikapur town for opening a departmental store and the defendant had failed to prove that such accommodation was available to the plaintiff and he being a heart patient wanted to quit the legal profession and intended to open a departmental store. As the ailment of the plaintiff was established from medical certificate of Ex-P.3, both the Courts below decreed the suit recording a concurrent finding of fact that the plaintiff required the suit accommodation for his bona fide need for opening a departmental store as he had no other alternative suitable accommodation available in Ambikapur town.

Learned counsel for the appellant challenged the findings of both the Courts below firstly on the ground that the tenancy was entered into between M/s. R.P.Budhiya and family and the defendant. The suit was filed in the name of Kailash Kumar Budhiya as the owner of the property and partition has been pleaded. To establish this, a family settlement deed has been filed which in fact is partition deed and as the partition deed was not registered, the same could not be taken on record. Learned counsel submitted that the suit was incompetent because the other partners of the firm had not joined in the suit.

The objection of the appellant/defendant in this regard has no force as the defendant has himself admitted in his written statement that he was paying rent to the plaintiff as he was member of joint family and on the basis of this admission in the written statement the objection of the defendant about pleadings of partition also has no force.

Learned counsel for the appellant/defendant further submitted that the plaintiff has pleaded in paragraph 9 of the plaint that before opening the departmental store he would have to undertake number of additions and alterations and for that purpose the suit accommodation was required to be vacated and thus the ground for eviction taken by the plaintiff is as per Section 12 (1) (h) of the Chhattisgarh Accommodation Control Act. It is further submitted that as per the provisions of Section 12 (7) of the Chhattisgarh Accommodation Control Act no order for the eviction of the tenant could be made on the ground specified in clause (h) of sub section 1 unless the plans and estimates for such reconstruction have been properly prepared, and in the present case no estimate or plan have been

has been dealt with elaborately. The relevant portion of the said judgment is reproduced as under:

> 10. "We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for his to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the unfortunate situation in our litigative slow-process system subsists. During 23 years, after the landlord moved for eviction on the ground that his son needed the building neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendent elite, because the opposite party succeeded in prolonging the matter for such unduly long period."

The plea of res judicata has been raised for the first time in the memo of appeal and substantial question of law has been proposed. On the basis of statement of the plaintiff on oath no further documents have been filed by the appellant/defendant in this regard to demonstrate that the issue involved in the former suit was materially the same and between the same parties.

On the aforesaid analysis, I am of the opinion that the concurrent findings of the fact recorded by both the Courts below are based on detailed and objective analysis of evidence available on record and no substantial question of law is involved for adjudication of the appeal.

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Consequently, the appeal being devoid of substance is liable to be dismissed and the same is dismissed at the admission stage itself.

M.C.P. No. 1338/2004 also stands disposed of.

Sd/-
DHIRENDRA MISHRA
Judge